

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Cellular South Licenses, Inc.)	
)	
Petition for Designation as)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
in the State of Alabama)	

COMMENTS

The Alabama Rural Local Exchange Carriers (“Alabama Rural LECs”) submit these Comments in response to the Supplement to Petition for Designation as an Eligible Telecommunications [Carrier] (“*Supplement*”) filed by Cellular South Licenses, Inc. (“CellSouth”) in response to the Commission’s *Virginia Cellular*¹ decision.

The Alabama Rural LECs note that said *Supplement* was filed during the initial round of filings submitted in response to the Commission’s April Public Notice inviting parties to update the record on pending petitions for ETC designation.² The Alabama Rural LECs would submit that as such the CellSouth *Supplement* was premature. According to the *April ETC Notice*, the initial round was for the “purpose of allowing parties to supplement their own petitions and

¹ *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

² *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004) (“*April ETC Notice*”).

applications.”³ The list of related petitions and applications specifically enumerated by the Commission included the Pending Application for Review filed by the Alabama Rural LECs (“*Application for Review*”) on December 30, 2002; the list did not include the underlying Petition of CellSouth for designation as an ETC,⁴ making CellSouth’s *Supplement* untimely. Procedurally, CellSouth should now be responding to the previously filed Supplement of the Alabama Rural LECs to their *Application for Review* (“*LEC Supplement*”).⁵

While the Alabama Rural LECs maintain that the Supplement should be dismissed, they submit these Comments as if the Supplement were properly filed in an effort to conserve both time and resources. Moreover, recognizing the Commission’s compressed timeframe in this proceeding, the Alabama Rural LECs adopt and incorporate, as if set forth fully herein, their arguments and positions contained in the *LEC Supplement*.⁶ Finally, one week ago today, ALLTEL withdrew its Petition for ETC designation in rural areas of Alabama.⁷ This action

³ *April ETC Notice* at p. 2.

⁴ *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*CellSouth Petition*”), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 24393 (“*CellSouth Order*”).

⁵ CellSouth, on the other hand, requests that the Commission dismiss the *LEC Supplement* as untimely because it was not filed within the 30-day period permitted for an Application for Review under Section 1.115(d) of the Commission’s Rules. CellSouth Motion to Dismiss, CC Docket No. 96-45 (May 19, 2004). CellSouth’s arguments in the Motion to Dismiss are inapposite because the *LEC Supplement* was not filed pursuant to Section 1.115(d). Instead, the *LEC Supplement* was filed in response to the Commission’s express invitation in the *April ETC Notice*. While the Alabama Rural LECs maintain that it is the *Supplement* that was untimely filed, they submit these Comments to the same.

⁶ Exhibit “A” attached hereto.

⁷ Letter from C. Tritt, counsel to ALLTEL Communications, Inc., to M. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, DA Nos. 03-1881, 03-1882, 03-3824, 03-3825 and 04-999 (May 21, 2004), withdrawing *ALLTEL Communications, Inc.* (“ALLTEL”), *Petition for Designation as an Eligible*

(continued...)

underscores the volatility and uncertainty in the rural ETC designation arena. As a result of the *ALLTEL Withdrawal*, the Alabama Rural LECs provide a revised summary of the status of rural ETC proceedings in Alabama in Section III *infra*.

I. CELLSOUTH DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN *VIRGINIA CELLULAR*

Revisiting CellSouth's ETC designation (and request), as supplemented, under the public interest framework enunciated in *Virginia Cellular* the Commission must "weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame."⁸ CellSouth's assertion that it would be "procedurally infirm and unfair"⁹ to apply these new standards is made without any legal support and validates the position of the Alabama Rural LECs that it is unwise to issue further ETC designations (or to allow granted ones to stand) pending a resolution of the outstanding ETC issues raised in the *Recommended Decision*.¹⁰

The claims made in CellSouth's *Supplement* simply do not survive the more stringent public interest analysis now embraced by the Commission. While CellSouth initially relied on

(continued...)

Telecommunications Carrier in the State of Alabama, (April 14, 2003) ("*ALLTEL Petition*") (the "*ALLTEL Withdrawal*").

⁸ *Virginia Cellular* at ¶ 28; see also *Highland Cellular* at ¶ 22.

⁹ *Supplement* at p. 2.

¹⁰ *Recommended Decision, Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) ("*Recommended Decision*").

the presumptive benefits of “competition and consumer benefit”¹¹ to support its contention that the public interest would be served by its ETC designation in certain rural service areas in Alabama, it has not – in its *Petition* or *Supplement*, provided the kinds of firm commitments required under *Virginia Cellular* and *Highland Cellular*. CellSouth makes no build-out or quality of services assurances in the nature of those made by Virginia Cellular or Highland Cellular. Moreover, CellSouth was and is competing for and winning customer lines without the benefit of high-cost support. Thus, efficiency gains inspired by long-term competition happened without the costs associated with the designation of additional ETCs.¹²

CellSouth also stated in its original filing that it “believ[ed]” that “its local calling area [would] be substantially larger [than the incumbent’s]”¹³ and that it would “implement a variety of service offerings and rate plans that will be competitive with incumbent service offerings.”¹⁴ It makes no additional firm commitments in its *Supplement*. Unlike Virginia Cellular, CellSouth does not assert that its “current rate plans include access to the local exchange network” or that it has “many plans [that] include a large volume of minutes.”¹⁵

Even with the filing of its *Supplement*, CellSouth fails to meet the more stringent public interest analysis in other areas. While CellSouth asserts in its *Supplement* that it is using Universal Service Fund (“USF” or the “Fund”) High Cost support to improve its wireless

¹¹ *CellSouth Petition* at p. 15.

¹² Alabama Rural LECs *ex parte*, CC Docket No. 96-45, DA No. 02-1465, *CellSouth Petition* (October 2, 2002).

¹³ *CellSouth Petition* at p. 16.

¹⁴ *Id.*

¹⁵ See *Virginia Cellular* at ¶ 20.

infrastructure for rural Alabama,¹⁶ CellSouth still does not provide a concrete commitment to serve sparsely populated areas. It provides no assurance of quality service to all portions of the designated study area. Moreover, CellSouth does not indicate that it has actually provisioned service to all requesting residential customers in rural Alabama or that it is providing service to any previously unserved rural areas in Alabama. Finally, CellSouth does not offer any concrete evidence that it has deployed services – advanced or otherwise, that result in “improved health and safety, mobility, wider local calling areas, competition or improved infrastructure”.¹⁷ CellSouth also states in its *Supplement* that it has planned construction for certain areas that are “particularly rural” and that lack “high-quality telecommunications providers”.¹⁸ However, in spite of the Commission’s invitation to update the record on such matters, CellSouth offers no evidentiary support for its assertion that these areas are without competition¹⁹ or without “high-quality” telecommunications service²⁰. Its Petition as supplemented remains deficient.

In addition, while CellSouth stated in its original Petition that it “will advertise the availability of the supported services and the corresponding charges in a manner that fully

¹⁶ *Supplement* at p. 1.

¹⁷ *Id.* at p. 6.

¹⁸ *Id.* at p. 11.

¹⁹ *Contra* Reply Comments of Alabama Rural LECs to CellSouth’s Opposition to *Application for Review*, CC Docket No. 96-45, DA No. 02-3317 (Jan. 24, 2003), at p. 3-4, referencing Map that indicates Mobile Operator Coverage by County.

²⁰ *Contra* Comments of Alabama Rural LECs to *CellSouth Petition*, CC Docket No. 96-45, DA No. 02-1465 (July 3, 2002) at p. 3, discussing subscription percentages, availability of service to rural residences and lack of held orders for service.

informs the general public”²¹ it still does not make specific commitments to advertise USF-supported services in the same fashion that it advertises services not supported by the USF. In sum, CellSouth fails to concretely identify how it intends to alter its current construction, service or marketing plans to enable it to provide “universal service” in the rural service area[s] in which it seeks ETC designation.

“[T]he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”²² Instead, the Commission balances the benefits and costs of ETC designation in a fact-specific exercise.²³ To date – even after filing its *Supplement*, CellSouth has not addressed the impact of the multiplicity of pending ETC Petitions in Alabama on the USF, a specific component of the more stringent public interest analysis.²⁴ The purported benefits of CellSouth’s ETC designation must be weighed against very real costs associated with introducing multiple carriers in sparsely populated areas such as the ones affected by the *CellSouth Order*.

In summary, CellSouth has not – in either its original Petition or *Supplement*, demonstrated that the purported benefits of providing USF support to its competitive CMRS service offering in the wire centers for which it seeks ETC designation outweighs potential harms.²⁵ Failure to set aside the *CellSouth Order* could dilute the USF funding available to the

²¹ *CellSouth Petition* at p. 9.

²² *Virginia Cellular* at ¶ 4.

²³ *Id.* at ¶ 28; see also *Highland Cellular* at ¶ 22.

²⁴ See *Virginia Cellular* at ¶ 4.

²⁵ *Virginia Cellular* at ¶ 28.

affected Alabama Rural LECs and make it more difficult for individual companies to maintain the network necessary to serve their entire service area.

II. DESIGNATING CELLSOUTH AS AN ETC IN A PORTION OF A RURAL TELEPHONE COMPANY'S WIRE CENTER IS NOT IN THE PUBLIC INTEREST

In *Highland Cellular* the Commission concluded that designating an ETC for only a portion of a rural telephone company's wire center was "inconsistent with the public interest".²⁶ In fact, the Commission cited the *RCC Order*.²⁷ Thus, *Highland Cellular* mandates that CellSouth's ETC designation for only a portion of Butler Telephone Company, Inc.'s Butler wire center be overturned. While CellSouth now indicates that it has the ability to serve the entire Butler wire center,²⁸ the existing partial designation cannot stand.

III. CERTAIN CHANGES IN THE STATUS OF ETC PROCEEDINGS REFLECT CONTINUED UNCERTAINTY AND SUPPORT A DELAY IN ANY FURTHER RURAL ETC DESIGNATIONS

Currently, there are five ETC proceedings (two granted and three pending) in rural Alabama.²⁹ Since the LEC Supplement was filed, ALLTEL withdrew the bifurcated rural

²⁶ *Highland Cellular* at ¶ 33.

²⁷ *Id.*

²⁸ *Supplement* at p.4.

²⁹ *Cell South Order*; *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* ("RCC Petition"), Memorandum Opinion and Order, 17 FCC Rcd 23532 ("RCC Order"); *AT&T Wireless Services, Inc. ("AT&T Wireless") Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (Dec. 31, 2003) ("AT&T Wireless Petition") as supplemented (May 11, 2004); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (May 13, 2003) ("Corr Petition") as supplemented (May 14, 2004); *Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 4, 2003) ("Nextel Petition") as supplemented (March 24, 2004).

portion of its Alabama ETC designation petition.³⁰ Of the Alabama Rural LECs, the following have at least two potential CETCs in some or all of their service areas: Castleberry Telephone Company, Inc., Frontier of Lamar County, Inc., Gulf Telephone Company, Inc., Hayneville Telephone Company, Inc. and Moundville Telephone Company, Inc.³¹ These carriers all have three: Butler Telephone Company, Inc.,³² Frontier of Alabama, Inc., Frontier of the South, Inc., Millry Telephone Company, Inc. and Mon-Cre Telephone Cooperative, Inc.³³ If all of the Alabama ETC petitions were granted or, in the case of the *RCC Order* and *Cell South Order*, were allowed to stand, the resulting CETCs in Alabama could draw millions of dollars annually from the USF.³⁴

The *Supplement* simply does not provide sufficient justification for upholding the *CellSouth Order*, which must be set aside until the Commission has resolved the outstanding ETC designation issues raised in the pending *Recommended Decision*. These proceedings will

³⁰ *ALLTEL Withdrawal*.

³¹ These numbers have been compiled by reviewing the *CellSouth Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *RCC Petition*. The *ALLTEL Petition* has been removed.

³² But for the recent removal of Butler Telephone Company, Inc. from the *Corr Petition* and the withdrawal of the *ALLTEL Petition*, this carrier would have five potential CETCs. Supplement to *Corr Petition* at footnote numbered 2; *supra* at footnote numbered 7.

³³ See *CellSouth Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *RCC Petition*.

³⁴ CellSouth projects that it will receive approximately \$110,000 per year in support for Alabama. *Supplement* at p. 4; RCC indicates that in a little over a year of ETC designation in Alabama it has received \$3.4M in high-cost support. *RCC Petition* Supplement at Exhibit A (May 14, 2004). Nextel expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. Nextel's Alabama Supplement to *Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). Corr Wireless estimates that it will receive approximately \$.5M annually in support for Alabama rural areas. *Corr Petition* Supplement at p. 8 (May 14, 2004). AT&T Wireless estimates that it will receive \$1M annually in high-cost support in its requested Alabama ETC designation areas. Supplement to *AT&T Wireless Petition* at p. 5 (May 10, 2004). Using solely these supplied figures, annual draws of several million dollars from the Fund for the state of Alabama alone would be virtually assured.

have a significant overall impact on the Fund.³⁵ Other wireless carriers, recognizing the uncertainty in rural designations, have voluntarily withdrawn their ETC designation requests, until the broader issues affecting the USF are resolved.³⁶ The Alabama Rural LECs respectfully assert that the Commission should similarly set aside and/or delay any pending ETC designations in rural areas to avoid any further confusion.

CONCLUSION

CellSouth still fails to make a sufficient showing that the public interest would be served by its designation as an ETC in rural areas in the state of Alabama. Moreover, CellSouth's ETC designation for only a portion of the Butler wire center of Butler Telephone Company, Inc. is prohibited.

Respectfully submitted,

Alabama Rural LECS

By: 

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May 28, 2004

³⁵ See, e.g., *Application for Review* at p. 2 and 13-16.

³⁶ See *ALLTEL Withdrawal*.

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 28th day of May, 2004, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS TO THE SUPPLEMENT OF CELLSOUTH HOLDINGS, INC., unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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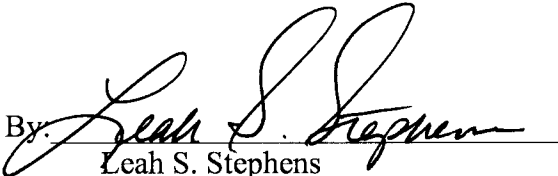
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By: 
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One of the Attorneys for the
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***via overnight delivery**

****via overnight U.S. Mail and E-mail**

Exhibit “A”

LEC Supplement

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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Federal-State Joint Board)	
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Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	

**SUPPLEMENT TO THE APPLICATION FOR REVIEW OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("Alabama Rural LECs")**

To: The Commission

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Its Counsel

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Blountsville Telephone Company
Brindlee Mountain Telephone Company, Inc.
Butler Telephone Company, Inc.
Castleberry Telephone Company, Inc.
Frontier Communications of Alabama, Inc.
Frontier Communications of Lamar County, Inc.
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
GTC, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

May 14, 2004

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SUMMARY

The *CellSouth Order* must be set aside until the Commission has resolved outstanding ETC designation issues – including critical issues affecting the Universal Service Fund, raised in the pending *Recommended Decision* of the Federal-State Joint Board on Universal Service.

Consistent with its announced intent to use the more stringent public interest analysis set forth in *Virginia Cellular* until the ETC designation issues raised in the *Recommended Decision* could be resolved, the Commission issued its ruling in *Highland Cellular*. Both rulings, however, failed to consider the most critical issue articulated by the Alabama Rural LECs in the *CellSouth Application for Review*: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area. Thus, the Commission should set aside the *CellSouth Order* until it has developed a framework for analyzing the overall impact on the Fund from increasing support payments to competitive ETCs.

If, however, the Commission should address the pending *Application for Review* in light of *Virginia Cellular*, CellSouth fails to meet its more rigorous requirements. Additionally, *Highland Cellular* dictates that CellSouth's ETC designation for only a portion of Butler Telephone Company, Inc.'s Butler wire center be overturned.

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FEDERAL COMMUNICATIONS COMMISSION
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Petition for Designation as)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
in the State of Alabama)	

**SUPPLEMENT TO
APPLICATION FOR REVIEW**

The Alabama Rural Local Exchange Carriers (“Alabama Rural LECs”)¹ submit this Supplement (“*Supplement*”) to their Application for Review filed on December 30, 2002 (“*Application for Review*”) in accordance with the Commission’s Public Notice released April 12, 2004, DA 04-999. The Alabama Rural LECs filed said *Application for Review* following the Wireline Competition Bureau’s grant of the petition of Cellular South License, Inc. (“CellSouth”) for designation as an eligible telecommunications carrier (“ETC”) entitled to receive universal service support in certain rural and non-rural areas of Alabama on December 4, 2002.²

¹Castleberry Telephone Company, Inc. joins in this filing. See *Application for Review* at p. 1. National Telephone Company, Inc., not previously listed as a part of the Alabama Rural LECs, also supports and adopts the group’s prior positions and more specifically joins in and supports this *Supplement*.

²*Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*CellSouth Petition*”), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 24393 (“*CellSouth Order*”).

The *CellSouth Order* must be set aside until the Commission has resolved the outstanding ETC designation issues raised in the pending Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”).³ As previously articulated by the Alabama Rural LECs, these proceedings will have a significant overall impact on the Universal Service Fund (“USF” or the “Fund”).⁴ Until the broader issues affecting the USF are resolved, CellSouth’s ETC designation cannot stand. If, however, the Commission should address the pending *Application for Review* in light of *Virginia Cellular*⁵, CellSouth fails to meet its heightened requirements. Finally, CellSouth’s ETC designation for only a portion of Butler Telephone Company, Inc.’s Butler wire center cannot stand.

I. IMPORTANT ETC DESIGNATION ISSUES REMAIN UNRESOLVED

In their *Application for Review*, the Alabama Rural LECs argued that “important policy considerations relating to the funding of multiple ETCs and multiple lines have been referred to the Joint Board”⁶ and that pending full Commission review, further action on ETC petitions would be premature.⁷ Following the issuance of the Commission’s *Joint Board Referral*⁸ and the

³ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“*Recommended Decision*”).

⁴ See e.g. *Application for Review* at p. 2 and 13-16.

⁵ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

⁶ *Application for Review* at p. 9.

⁷ *Application for Review* at p. 11.

⁸ *Federal-State Joint Board on Universal Service, Order*, CC Docket No. 96-45, 17 FCC Rcd 22642 (2002) (“*Joint Board Referral*”).

filing by the Alabama Rural LECs of their *Application for Review*, the Joint Board sought comments on the rules relating to high-cost universal service support and the ETC designation process.⁹ As a result, interested parties submitted comments to the Joint Board that raise issues and concerns for the Commission to review when evaluating petitions for ETC designation, particularly in rural areas. While the Joint Board has since issued its *Recommended Decision* in the matter – noting that ETC designations in areas served by rural carriers are entitled to “rigorous review”¹⁰, the Commission has not yet acted on the Joint Board’s recommendations. Hence, important ETC designation issues remain unresolved.

While awaiting the *Recommended Decision*, the Commission granted a pending application for ETC designation in *Virginia Cellular* and stated that “[t]he framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.”¹¹ This standard was intended to provide a more stringent public interest analysis while “await[ing] a recommended decision from the Joint Board”.¹²

In keeping with its announced intent to apply *Virginia Cellular* until resolution of the ETC designation issues raised in the *Recommended Decision*, the Commission issued *Highland*

⁹ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (Jt. Bd. 2003) (“*High Cost/ETC Public Notice*”).

¹⁰ *See Recommended Decision* at ¶ 17.

¹¹ *See Virginia Cellular* at ¶ 4.

¹² *Id.*

*Cellular*¹³. However, in neither *Virginia Cellular* or *Highland Cellular* did the Commission reach a pivotal issue articulated by the Alabama Rural LECs in the *CellSouth Application for Review*: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area.¹⁴

Finding “that grant of *this ETC designation* will not dramatically burden the universal service fund,” the Commission did not address this issue of “overall impact” of ETC designations on the Fund in *Virginia Cellular*.¹⁵ Instead, the Commission in *Virginia Cellular* expressed its “hope that the Commission’s pending rulemaking proceeding also will provide a framework for assessing the *overall impact* of competitive ETC designations on the universal service mechanisms.”¹⁶ Correctly, neither the full Joint Board nor the federal Commissioners on the Joint Board have ignored the potential explosion in the USF.¹⁷

¹³*Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”).

¹⁴*See Application for Review* at p. 14 –16 (noting in footnote numbered 53 that “[t]he Alabama ETC cases, RCC and Cellular South, have drawn particular attention since these companies have significant overlap in the territory that they serve.”).

¹⁵*See Virginia Cellular* at ¶ 31 (emphasis added).

¹⁶*Id.* (emphasis added).

¹⁷ *See Recommended Decision* at ¶ 67 (noting that the Joint Board’s “examination of the record reveals a potential for uncontrolled growth [of the USF] as more and more competitive ETCs are designated in rural and high-cost areas.”); Separate Statement of Commissioner Kathleen Q. Abernathy (“[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers.”); Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I concur in the Joint Board’s recommendation to seek alternative means of limiting fund growth.”); Joint Separate Statement of Commissioners Jonathan S. Adelstein, et al. (“There are other better means to control fund growth” than the primary line proposal.).

The Alabama Rural LECs agree with the Comments of TDS Telecom on the pending Alabama ETC Petition of Nextel Partners: “Given the issue[s] left open in *Virginia Cellular* and *Highland Cellular*, it is not appropriate for the Commission to evaluate *all* pending ETC petitions under the public interest standard set forth in *Virginia Cellular*.”¹⁸ The *CellSouth Order* implicates issues quite unlike those addressed by the Commission in *Virginia Cellular* and *Highland Cellular*. The petition for ETC designation granted in the *CellSouth Order* is only one of many proceedings for ETC designation in Alabama (the “Alabama Petitions”).¹⁹ If these Alabama Petitions were all granted after being reviewed in isolation from each other, at least one rural carrier in Alabama would face as many as five competitive ETCs (“CETC”s) operating in its service area, others two, three or four.²⁰ This would clearly be unsustainable in areas where the economies of scale may not support any competition at all. Accordingly, the Commission cannot properly assess whether the public interest was (or would be) served by granting the *CellSouth Order* (or the *RCC Order* and other pending Alabama Petitions) until the Commission

¹⁸ Comments of TDS Telecom in response to the *Supplement to Petition for Designation as an ETC in the State of Alabama* of NPCR Inc., d/b/a Nextel Partners (“Nextel”), CC Docket No. 96-45 at p. 4 (filed May 7, 2004) (“TDS Comments”).

¹⁹ *CellSouth Order*; *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*RCC Petition*”), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (“*RCC Order*”); *ALLTEL Communications, Inc.* (“ALLTEL”), *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 14, 2003) (“*ALLTEL Petition*”); *AT&T Wireless Services, Inc.* (“AT&T Wireless”) *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (Dec. 31, 2003) (“*AT&T Wireless Petition*”) as supplemented (May 11, 2004); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (May 13, 2003) (“*Corr Petition*”); *NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, (April 4, 2003) (“*Nextel Petition*”) as supplemented (March 24, 2004).

²⁰ See *infra* at p. 6-8 (discussing ETC Petition overlap in Alabama).

has finalized “a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.”²¹ The *CellSouth Order* must be set aside.

II. FAILURE TO SET ASIDE THE CELLSOUTH ORDER WOULD HAVE A SIGNIFICANT OVERALL IMPACT ON THE UNIVERSAL SERVICE FUND

As stated, CellSouth is not the only CMRS provider seeking ETC designation in rural Alabama. There are five other ETC designation proceedings pending with the Commission, all affecting Alabama Rural LECs.²² Three ETC designation petitions involve large CMRS providers – ALLTEL, AT&T Wireless and Nextel. If, in addition to the *Cell South* and *RCC Orders*, each of those petitions (along with the *Corr Wireless Petition*) were granted, the resulting CETCs in Alabama could draw millions of dollars annually from the USF.²³ When viewed in this context, not only must the *CellSouth Order* (and *RCC Order*) be set aside, but a suspension of any further ETC grants in Alabama is also mandated, pending resolution of the issues outlined in the *Recommended Decision*.

If the *CellSouth Order* is allowed to stand, the Commission will be signaling its approval for an endless number of wireless ETC applications – and ultimately designations, to issue in overlapping rural service territories without first resolving the significant impact that such multiple designations will have on the Fund and on the underlying goals of the Fund. In *Virginia*

²¹ See *Virginia Cellular* at ¶ 31.

²² *RCC Order*; *ALLTEL Petition*; *AT&T Wireless Petition*; *Corr Petition*; *Nextel Petition*.

²³ Nextel alone expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. See Nextel’s Alabama Supplement to *Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). Conservatively estimating that AT&T Wireless and ALLTEL combined will draw another \$1M from the Fund as a result of their Alabama filings and then adding three more Alabama ETCs to the pool, annual draws of over \$2M from the Fund for the state of Alabama alone would be virtually assured.

and *Highland Cellular* the Commission could determine with some degree of confidence that the grant of ETC status in *those specific instances* would not dramatically burden the Fund. That is not the case in Alabama.

Simply put, the existence of six ETC proceedings – two granted and four pending, in Alabama deserves considerable attention. Each one should not be viewed in isolation. The Commission should set aside the *CellSouth Order* (and *RCC Order*) and defer decision on all other pending Alabama ETC Petitions until it issues a final rule establishing a framework for determining the “overall impact” on the Fund that overlapping ETC petitions will have on its sustainability and purpose. If the Commission evaluates pending petitions in isolation before resolving the issue of whether the number of competitive ETCs (“CETCs”) in each rural area should be capped, this could accelerate the growth of (and ultimately destabilize) the Fund. Significantly, it could also undermine the paramount goal of the Fund – supporting and promoting truly “universal service” – in the name of promoting competition in areas where the economies of scale may not support or justify competitive entry.²⁴

As previously stated, there are six ETC proceedings (two granted and four pending) in Alabama. Of the Alabama Rural LECs, the following have at least two potential CETCs in some or all of their service areas: Graceba Total Communications, Inc., GTC, Inc., Moundville

²⁴ See *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I have concerns with policies that use universal service support as a means of creating ‘competition’ in high cost areas. ... I remain hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier”).

Telephone Company, Inc., and Union Springs Telephone Company, Inc.²⁵ These carriers have three or four: Castleberry Telephone Company, Inc., Frontier of Alabama, Inc., Frontier of Lamar County, Inc., Frontier of the South, Inc., Gulf Telephone Company, Inc., Hayneville Telephone Company, Inc., Millry Telephone Company, Inc. and Mon-Cre Telephone Cooperative, Inc.²⁶ Finally, Butler Telephone Company, Inc. has five.²⁷ The *CellSouth Order* must be examined in the context of all pending ETC requests for the state of Alabama. “Where the economies of scale in a study area do not support multiple competitive entrants, a petitioner for ETC designation should face a particularly high public interest hurdle before the Commission can grant an additional CETC designation.”²⁸ Simply, the *CellSouth Order* must be set aside pending the Commission’s resolution of the “overall impact” issue. The remaining Alabama Petitions (and *RCC Order*) highlight this need.

III. CELLSOUTH DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN *VIRGINIA CELLULAR*

If the Commission, however, undertakes to evaluate the underlying *Application for Review* on its merits, it must revisit CellSouth’s ETC request under the public interest framework enunciated in *Virginia Cellular*, “weigh[ing] the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone

²⁵ These numbers have been compiled by reviewing the *CellSouth Petition*, *AT&T Wireless Petition*, *ALLTEL Petition*, *Corr Petition*, *Nextel Petition* and *RCC Petition*.

²⁶ *Id.*

²⁷ *Id.*

²⁸ TDS Comments at p. 10.

service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame."²⁹ The claims made in CellSouth's filings simply do not survive the more stringent public interest analysis now embraced by the Commission.

While CellSouth repeatedly relied on the presumptive benefits of "competition and consumer benefit"³⁰ to support its contention that the public interest would be served by its ETC designation in certain rural service areas in Alabama, it did not, however, provide the kinds of firm commitments required under *Virginia Cellular* and *Highland Cellular*. CellSouth made no build-out or quality of services assurances in the nature of those made by Virginia Cellular or Highland Cellular. Moreover, CellSouth was and is competing for and winning customer lines without the benefit of high-cost support. Thus, efficiency gains inspired by long-term competition have happened without the costs associated with the designation of additional ETCs.³¹

While CellSouth stated that it "will implement ... E-911 services in compliance with all state and federal requirements"³², this does not rise to the level of commitment provided by Virginia Cellular. Virginia Cellular stated that "it is in compliance with state and federal 911 and E-911 mandates and is upgrading from analog to digital technology", "it is implementing Phase I E-911 services in those areas where local governments have developed E-911

²⁹ *Virginia Cellular* at ¶ 28; see also *Highland Cellular* at ¶ 22.

³⁰ *CellSouth Petition* at p. 15.

³¹ See CC Docket No. 96-45, *CellSouth Petition*, Alabama Rural LECs *ex parte* (Oct. 2, 2002).

³² *CellSouth Petition* at p. 16.

functionality” and “that upon designation as an ETC, it will be able to effectively implement E-911.”³³ Cell South did not make similar representations.

CellSouth stated that it “believes” that “its local calling area will be substantially larger [than the incumbent’s]”³⁴ and that it “will implement a variety of service offerings and rate plans that will be competitive with incumbent service offerings.”³⁵ Unlike Virginia Cellular, CellSouth did not assert that its “current rate plans include access to the local exchange network” or that it had “many plans [that] include a large volume of minutes.”³⁶

CellSouth fails to meet the more stringent public interest analysis in other areas. While CellSouth committed to using USF High Cost support to upgrade its network facilities for rural areas, CellSouth did not provide a firm commitment to serve sparsely populated areas. CellSouth provided no assurance of quality service to all portions of the designated study area. In addition, while CellSouth stated that it “will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public”³⁷ it did not make specific commitments to advertise USF-supported services in the same fashion that it advertises services not supported by the USF. Similarly, CellSouth provided no real description of how it plans to advertise the availability and terms and conditions of Lifeline and Linkup services. In sum, CellSouth failed to concretely identify how it intends to alter its current

³³ See *Virginia Cellular* at ¶ 19.

³⁴ *CellSouth Petition* at p. 16.

³⁵ *Id.*

³⁶ See *Virginia Cellular* at ¶ 20.

³⁷ *CellSouth Petition* at p. 9.

construction, service or marketing plans to enable it to provide “universal service” in the rural service area[s] in which it seeks ETC designation.

“[T]he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”³⁸ Instead, the Commission balances the benefits and costs of ETC designation in a fact-specific exercise.³⁹ To date, CellSouth has not addressed the impact of the multiplicity of pending ETC Petitions in Alabama on the USF, a specific component of the more stringent public interest analysis.⁴⁰ The purported benefits of CellSouth’s ETC designation must be weighed against very real costs associated with introducing multiple carriers in sparsely populated areas such as the ones affected by the *CellSouth Order*.

The Alabama Rural LECs have submitted data from the 2000 census indicating that in many of the rural studies areas for which CellSouth seeks ETC status the population density is very low.⁴¹ The Commission has recognized that low population density typically indicates high-cost.⁴² Similarly, the Alabama Rural LECs have previously stated that the cost of building and maintaining a public telephone network is extremely sensitive to the density of the serving area, establishing that costs increase gradually with decreasing population density until around

³⁸ See *Virginia Cellular* at ¶ 4.

³⁹ *Id.* at ¶ 28; see also *Highland Cellular* at ¶ 22.

⁴⁰ See *Virginia Cellular* at ¶ 4.

⁴¹ See CC Docket No. 96-45, *CellSouth Petition* and *RCC Petition*, Alabama Rural LECs *ex parte* (Sept. 5, 2002).

⁴² *Virginia Cellular* at ¶ 34.

100 households per square mile.⁴³ Below this level, costs increase geometrically as subscriber density decreases.⁴⁴

When two, three, four or even five CETCs serve the same territory, the average subscriber density for each carrier will be less than if a single company served the same territory. This will have the impact of significantly increasing each carrier's average cost of serving all subscribers. The impact of this increase will be more dramatic where a high percentage of lines in the study area are in the two lowest density/highest cost zones. The following data, previously submitted by the Alabama Rural LECs, shows that four of the rural carriers within the scope of CellSouth's designated service area have a significant majority of their customers located in these lowest two density zones:

Household Density⁴⁵

Study Area Name	Loops	% 0 to 5 HH/sq mile	% 5 to 100 HH/sq mile	% over 100 HH/sq mile	Average Study Area Density (HH/sq mi)
Butler Telephone Company	8,771	9.5%	61.5%	29.0%	10.2
Castleberry Telephone Company	1,010	8.8%	61.5%	29.7%	9.8
Frontier Communications – AL	14,341	13.0%	46.5%	40.5%	8.8
Millry Telephone Company	7,127	17.5%	71.5%	11.0%	6.8

⁴³ See CC Docket No. 96-45, *CellSouth Petition* and *RCC Petition*, Alabama Rural LECs *ex partes* (Sept. 5 and Oct. 2, 2002).

⁴⁴ *Id.*

⁴⁵ Source: 2000 Census – Density at the Census Block Level.

The overall impact of all the Alabama Petitions (pending and granted) may be the creation of a “great disparity in density”⁴⁶ between the wire centers sought to be served and the ones left unserved by Alabama CETCs. If this is the case, an affected Alabama Rural LEC could be placed at a “sizeable unfair competitive disadvantage.”⁴⁷ Multiple CMRS service offerings could have an overall effect of taking funding away from an Alabama Rural LEC if the combined CETCs primarily serve the more highly concentrated population centers within the study area, while more remote areas are still served by the LEC alone. This ultimately leaves the LEC to serve higher cost areas with less USF funding and could also delay the deployment of advanced services throughout the study area.

In summary, CellSouth has not demonstrated that the purported benefits of providing USF support to its competitive CMRS service offering outweigh the costs. Failure to set aside the *CellSouth Order* could dilute the USF funding available to the affected Alabama Rural LECs and make it more difficult for individual companies to maintain the network necessary to serve their entire service area.

IV. DESIGNATING CELLSOUTH AS AN ETC IN A PORTION OF A RURAL TELEPHONE COMPANY’S WIRE CENTER IS NOT IN THE PUBLIC INTEREST

In *Highland Cellular* the Commission concluded that designating an ETC for only a portion of a rural telephone company’s wire center was “inconsistent with the public interest”.⁴⁸

⁴⁶ *Virginia Cellular* at ¶ 35.

⁴⁷ *Id.*

⁴⁸ *Highland Cellular* at ¶ 33.

In fact, the Commission cited the *RCC Order*.⁴⁹ Thus, *Highland Cellular* mandates that CellSouth's ETC designation for only a portion of Butler Telephone Company, Inc.'s Butler wire center be overturned.

CONCLUSION

Because the *CellSouth Order* when viewed in the total context of the ETC picture in Alabama, would have a significant *overall* impact on the Universal Service Fund, the Commission should set aside the *CellSouth Order* until it has developed a framework for analyzing the overall impact on the Fund from increasing support payments to competitive ETCs. Finally, CellSouth did not make a sufficient showing that the public interest would be served by its designation as an ETC in the state of Alabama. Moreover, CellSouth's ETC designation for only a portion of the Butler wire center of Butler Telephone Company, Inc. is prohibited.

Respectfully submitted,

Alabama Rural LECS

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May 14, 2004

⁴⁹ *Id.*

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 14th day of May, 2004, a true and correct copy of the above and foregoing SUPPLEMENT TO THE APPLICATION OF REVIEW OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS, unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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Wireline Competition Bureau
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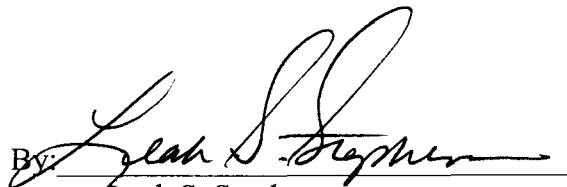
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***via overnight delivery**

**Federal Communications Commission**

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